



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
FAIRFAX COUNTY BOARD OF SUPERVISORS  
FOR  
NOMAN M. COLE, JR. POLLUTION CONTROL PLANT  
VPDES PERMIT No. VA0025364**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Fairfax County Board of Supervisors, regarding the Noman M. Cole, Jr. Pollution Control Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and Regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Collection System" means the wastewater sewer system owned by Fairfax County Board of Supervisors and operated by Fairfax County Public Works and Environmental Services Department.
4. "County Public Works" means the Fairfax County Department of Public Works and Environmental Services.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "Facility" or "Plant" means the Noman M. Cole, Jr. Pollution Control Plant located at 9399 Richmond Highway, Lorton, Virginia, a 67 Million Gallons per Day (MGD) plant which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Fairfax County.
10. "Fairfax County" or the "County" means the Fairfax County Board of Supervisors which supervise the government of Fairfax County, a political subdivision of the Commonwealth of Virginia. The Fairfax County Board of Supervisors is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0025364, which was issued under the State Water Control Law and the Regulation to the Fairfax County Board of Supervisors on September 29, 2008, and which expires on September 28, 2013.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water...  
9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "UT" means unnamed tributary.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VDOT" means the Virginia Department of Transportation.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The County owns the Facility and Collection System located in Fairfax County, Virginia. The entire system serves a population of approximately 1.1 million residents, as well as businesses. The Collection System includes 3,380 miles of sewer lines and 63 pump stations in a service area that covers 234 square miles. The Collection System conveys

over 40 billion gallons of sewage each year. The Facility is operated by the County Public Works. The Facility treats over 15 billion gallons each year. The Permit authorizes the County to discharge treated sewage from the Plant, to Pohick Creek, located within the Potomac River Basin, in strict compliance with the terms and conditions of the Permit.

2. Pohick Creek flows to the Potomac River. The Potomac River is within the Potomac River Basin. This receiving stream is listed in DEQ's 2010 305(b)/303(d) Integrated Report as a water impaired for recreation due to excursions from the maximum E. coli bacteria criterion and as impaired for fish consumption because of elevated Polychlorinated Biphenyls (PCBs) and benzo(k) fluoranthene in fish tissue.
3. On December 14, 2010, County Public Works staff reported an overflow of an on-site septage tank at the Facility causing approximately 10 gallons of raw sewage to discharge to a storm drain. The storm drain system flows into an UT, which leads to the Pohick Creek. The overflow was due to septage hauler fault and was unavoidable by Fairfax County.
4. On January 19, 2011, County Public Works staff reported an unauthorized discharge of approximately 580,000 gallons of tertiary clarifier sludge at the Facility into the onsite creek which leads to Pohick Creek. Tertiary clarifier sludge is the liquid withdrawn from the bottom of the third (tertiary) set of the Facility's settling tanks. It is 99.85-percent water. The remaining component is primarily ferric hydroxide, commonly known as rust. In their report, County Public Works staff noted that pollutants did not exceed permitted monthly average loadings and thus caused little or no environmental damage.
5. On February 24, 2011, Fairfax County reported an overflow from manhole #37 of approximately 1,800 gallons of raw sewage into an UT of Rabbit Branch. The overflow was due to restaurant pretreatment failures and was unavoidable by Fairfax County.
6. On March 14, 2011, DEQ issued a Warning Letter (WL), W2011-03-N-1002, to Fairfax County for the January 19, 2011 release at the Facility.
7. On March 19, 2011, there was an unauthorized discharge of raw sewage from the Waynewood II Wastewater Pumping Station (#127) of approximately 25,000 gallons into an UT of the Potomac River. The pump station is equipped with primary and secondary pump control systems. The primary control consists of a bubbler system while the secondary consists of a series of float ball controls. During a maintenance operation, the secondary pump control system was activated. However, due to a faulty float ball, the pump controls did not revert back to the primary control system, generating a high wet well alarm. Due to miscommunication, the alarm was interpreted as a false alarm.
8. On May 10, 2011, Fairfax County reported an overflow from manhole #341 of approximately 5,000 gallons of raw sewage into Pohick Creek. The overflow was caused by a miscommunication with VDOT and was unavoidable by Fairfax County.

9. On May 10, 2011, Fairfax County reported an overflow from manhole #52 of approximately 50,000 gallons of raw sewage into an UT of South Run. The overflow was due to vandalism and was unavoidable by Fairfax County.
10. On June 6, 2011, Fairfax County reported the unauthorized discharge from manhole #32 of approximately 2,000 gallons of raw sewage entering an unnamed tributary of Pohick Creek. The overflow was due to vandalism and was unavoidable by Fairfax County.
11. On June 13, 2011, DEQ issued a WL, W2011-06-N-1009, to Fairfax County for the overflow on March 19, 2011.
12. On July 11, 2011, DEQ issued a NOV, W2011-07-N-0003, to Fairfax County for the overflows on May 10, 2011.
13. On July 26, 2011, County Public Works staff and DEQ met to discuss the WLs and the NOV. At the meeting County Public Works staff explained that the unauthorized discharge of the tertiary clarifier sludge was caused by human error. Subsequently the County assigned blame to an engineering firm for design omission. The unauthorized discharge from the Waynewood II Wastewater Pumping Station was caused by equipment failure but compounded by human error. County Public Works revised the practices and training accordingly to prevent futures incidents. The other overflows were unavoidable by Fairfax County.
14. On August 16, 2011, DEQ issued a NOV, W2011-08-N-0005, to Fairfax County for the overflow on June 6, 2011.
15. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
16. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
18. The Department has issued no discharge permits or certificates to Fairfax County other than VPDES Permit No. VA0025364.
19. Permit Condition Part II, Page 2, Section F states that “[e]xcept in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: (1) Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or (2) Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to

animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

20. Pohick Creek, Rabbit Run, South Run and an UT of the Potomac River are a surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.
21. Based on the incident reporting made on behalf of the County, the Board concludes that the County has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging untreated sewage from the Collection System and partially treated sludges from the Plant while concurrently failing to comply with the conditions of the Permit by discharging sewage or clarifier sludge, as described in paragraph C(3) through C(10) above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Fairfax County Board of Supervisors, and Fairfax County Board of Supervisors agrees to pay a civil charge of \$15,015.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The Fairfax County Board of Supervisors shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Fairfax County for good cause shown by Fairfax County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized

by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Fairfax admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Fairfax County consents to venue in the Circuit Court of the County of Fairfax for any civil action taken to enforce the terms of this Order.
5. Fairfax County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Fairfax County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Fairfax County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Fairfax County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fairfax County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Fairfax County. Nevertheless, Fairfax County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Fairfax County has completed all of the requirements of the Order;
  - b. Fairfax County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Fairfax County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fairfax County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Fairfax County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Fairfax County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Fairfax County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Fairfax County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Fairfax County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5<sup>th</sup> day of April, 2012.



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Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

Fairfax County Board of Supervisors voluntarily agrees to the issuance of this Order.

Date: 1/26/12 By: Sharon Bulova (Person) Chairman (Title)  
Fairfax County Board of Supervisors

Commonwealth of Virginia

City/County of Fairfax

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of January, 2012, by Sharon Bulova who is Chairman of Fairfax County Board of Supervisors on behalf of Board.

Bonnie K. Freeman  
Notary Public

125124  
Registration No.

My commission expires: Jan 31, 2015

Notary seal:

